

1 Zia F. Modabber (CA 137388)  
zia.modabber@kattenlaw.com  
2 Tami Kameda Sims (CA 245628)  
tami.sims@kattenlaw.com  
3 Jarin R. Jackson (CA 274031)  
jarin.jackson@kattenlaw.com  
4 **KATTEN MUCHIN ROSENMAN LLP**  
5 2029 Century Park East, Suite 2600  
6 Los Angeles, CA 90067-3012  
Telephone: 310.788.4400  
7 Facsimile: 310.788.4471

8 Attorneys for Defendant and Counterclaimant  
9 CLAUDETTE ROBINSON

10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 WILLIAM ROBINSON, JR., an  
13 individual

14 Plaintiff,

15 vs.

16 CLAUDETTE ROGERS ROBINSON,  
17 an individual,

18 Defendant.

19  
20 CLAUDETTE ROBINSON, an  
21 individual,

22 Counterclaimant,

23 vs.

24 WILLIAM ROBINSON, JR., an  
25 individual,

26 Counterdefendant.  
27  
28

Case No. 14-cv-01701 JAK (FFMx)

[Hon. John A. Kronstadt]

**SUR-REPLY IN SUPPORT OF  
OPPOSITION TO MOTION TO  
DISMISS BY DEFENDANT AND  
COUNTERCLAIMANT CLAUDETTE  
ROBINSON**

1 **I. INTRODUCTION**

2 At the June 30, 2014 Scheduling Conference, the Court asked Mr. Robinson to  
3 brief the issue of whether the district court or the superior court is the proper forum to  
4 hear the counterclaims that relate to or arise out of the pendent family law issues in the  
5 state court divorce settlement. The Court gave Mr. Robinson five extra pages in his  
6 reply brief to do so, and gave Ms. Robinson this five-page Sur-Reply to respond. *See*  
7 Declaration of Jarin R. Jackson, ¶ 2, Ex. A, Reporter's Transcript of Proceedings,  
8 10:23-13:6. Ms. Robinson submits this Sur-Reply pursuant to the Court's direction.

9 **II. MR. ROBINSON DID NOT ADDRESS THE JURISDICTIONAL ISSUES**  
10 **ARISING FROM MS. ROBINSON'S STATE LAW CLAIMS AS**  
11 **INSTRUCTED BY THE COURT**

12 Mr. Robinson did not address the forum-related questions raised by the Court in  
13 the extra five pages he was given. Instead, he argued brand new and additional  
14 grounds to dismiss Ms. Robinson's second through seventh counterclaims. (Reply  
15 Brief, Section II.A). The damages and ripeness arguments he presents for the first  
16 time in his reply were never the basis for his motion, and were therefore not addressed  
17 in Ms. Robinson's Opposition brief. As this argument was not invited by the Court,  
18 and because they were never raised in Mr. Robinson's Motion to Dismiss, his attempt  
19 to raise them on reply is unfair and improper.<sup>1</sup> *See Ojo v. Farmers Grp., Inc.*, 565  
20 F.3d 1175, 1186 n.13 (9th Cir. 2009) ("[I]t is generally improper for the moving party  
21 to...introduce new facts or different legal arguments in the reply brief  
22 [beyond]...[those that were] presented in the moving papers."); *Zamani v. Carnes*,

23  
24  
25 <sup>1</sup> Because the Court requested briefing in the Reply and Sur-Reply only on the  
26 limited issue of the forum for the family law related claims, it ordered that Ms.  
27 Robinson prepare her Sur-Reply within 4 days of receiving the Reply Brief. In the  
28 event that the Court is inclined to consider Mr. Robinson's new reply arguments, Ms.  
Robinson requests an opportunity to submit supplemental briefing on those issues.

491 F.3d 990, 997 (9th Cir. 2007) (“district court need not consider arguments raised for the first time in a reply brief”).

### **III. THIS COURT SHOULD EXERCISE SUPPLEMENTAL JURISDICTION OVER THE SECOND THROUGH SEVENTH COUNTERCLAIMS**

Federal district courts have supplemental jurisdiction over state-law claims “that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy.” 28 U.S.C. § 1367(a). A state law claim meets the test of forming part of the same case or controversy as the federal claim if it “derive[s] from a common nucleus of operative fact.” *Id.* (quoting *Cicio v. Does*, 321 F.3d 83, 97 (2d Cir. 2003)). Compulsory counterclaims asserted by defendant against plaintiff also fall within the court’s supplemental jurisdiction. *Id.* No other basis for jurisdiction need be established. *Baker v. Gold Seal Liquors, Inc.*, 417 U.S. 467, 469 n.1 (1974); *Lee v. West Coast Life Ins. Co.*, 688 F.3d 1004, 1009-10 (9th Cir. 2012).

When original jurisdiction has been conferred by federal-law claims and extended over pendant state-law claims, dismissal of the federal claims does not necessarily end the federal court’s jurisdiction over the state-law claims. *Carnegie–Mellon Univ. v. Cohill*, 484 U.S. 343, 353, 357 (1988). The district court still maintains the discretion to retain the pendent state-law claims. *Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1000 (9th Cir. 1997). In choosing whether to retain jurisdiction, a court should consider “the values of judicial economy, convenience, fairness, and comity.” *Carnegie*, 484 U.S. at 350.

Here, a federal question arises under both Mr. Robinson and Ms. Robinson’s declaratory relief claims as to whether Mr. Robinson’s exercise of his termination rights under the Copyright Acts divests Ms. Robinson of not only her ownership interest in the copyrights, but also her contractual interest in the economic benefits that stem from the exploitation of these copyrights. Given the existence of this federal question, the exercise of supplemental jurisdiction over Ms. Robinson’s state law claims is warranted because they involve related and intertwined issues of law and

1 fact. For instance, the parties' declaratory relief claims and Ms. Robinson's state law  
2 counterclaims, all involve an analysis of the following facts: that Mr. Robinson wrote  
3 the Community Musical Compositions, that he assigned the copyrights in each of the  
4 compositions to a music publisher, that Mr. Robinson entered into a stipulated  
5 judgment with Ms. Robinson which granted Ms. Robinson a one-half interest in the  
6 copyrights and the economic benefits derived therefrom, and that Mr. Robinson is  
7 attempting to disavow all of Ms. Robinson's rights in the Community Musical  
8 Compositions upon termination of the copyrights.

9 Further, there are intertwined legal issues. All but one of Ms. Robinson's state  
10 law claims assert that Ms. Robinson was harmed if Mr. Robinson's asserted rights and  
11 allegations are true. Thus, if Mr. Robinson is allowed to take actions to divest Ms.  
12 Robinson of all of her rights in the Community Musical Compositions by electing to  
13 terminate copyright assignments made to third parties, then his conduct has violated  
14 his independent state law obligations to Ms. Robinson. Specifically, Mr. Robinson  
15 was legally bound as a fiduciary to forever protect Ms. Robinson's rights to the  
16 copyrights and all fruits derived therefrom. It would not be efficient for these state-  
17 law based counterclaims to be pursued in a parallel fashion in state court given the  
18 connection to the federal issues presented to this Court.

19 As long as a federal question remains in the case, Ms. Robinson respectfully  
20 requests that the Court exercise supplemental jurisdiction over her state-law  
21 counterclaims. In so doing, the Court furthers judicial economy, convenience, and  
22 fairness to the parties. If at some point the federal question ceases to be an issue in the  
23 matter, the Court and the parties can certainly revisit the issue of supplemental  
24 jurisdiction. At that point, whether the Court should exercise supplemental  
25 jurisdiction over Ms. Robinson's state law claims will likely depend on the stage of  
26 the proceedings, the best way to conserve judicial resources, and what is more  
27 efficient for the parties.

1 **IV. CONCLUSION.**

2 For the foregoing reasons, Ms. Robinson respectfully requests that the Court (1)  
3 disregard Section II.A in Mr. Robinson's Reply Brief; and (2) exercise supplemental  
4 jurisdiction over the state law claims at this juncture.

5 Dated: July 18, 2014

KATTEN MUCHIN ROSENMAN LLP  
Zia F. Modabber  
Tami Kameda Sims  
Jarin R. Jackson

8 By: /s/ Zia F. Modabber  
9 Zia F. Modabber  
10 Attorneys for Defendant and Counterclaimant  
11 CLAUDETTE ROBINSON  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Katten**

KattenMuchinRosenman LLP

2029 Century Park East, Suite 2600  
Los Angeles, CA 90067-9012  
310.788.4400 tel 310.788.4471 fax